

**SOAH DOCKET NO. 458-08-0245**

<b>TEXAS ALCOHOLIC BEVERAGE</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>COMMISSION</b>	<b>§</b>	
	<b>§</b>	
<b>V.</b>	<b>§</b>	
	<b>§</b>	<b>OF</b>
<b>MAURECE LYNN CLARK</b>	<b>§</b>	
<b>D/B/A TEXAN’S LIQUORS</b>	<b>§</b>	
<b>HARRIS COUNTY, TEXAS</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this enforcement action against Maurece Lynn Clark d/b/a Texan’s Liquors (Respondent), alleging the same type of violation on two dates, December 1 and 2, 2006:

Respondent, or Respondent’s agent, servant, or employee, failed to timely pay for liquor from a wholesale dealer. By failing to timely pay for liquor from a wholesale dealer, Respondent violated Texas Alcoholic Beverage Code (Code) §§ 11.61 (b) (2), 61.71 (a) (1), and 102.32.

Staff recommended that Respondent’s permits/licenses be suspended for a period of six days, or that Respondent be allowed to pay a fine of \$900.00 in lieu of suspension. The Administrative Law Judge (ALJ) agrees with this recommendation.

**I. PROCEDURAL HISTORY**

The hearing convened on November 30, 2007, at the State Office of Administrative Hearings Office, 2020 North Loop West, Suite # 111, Houston, Texas, and the record was closed on the same day. Staff attorney Lindy Hendricks represented the Petitioner. Respondent did not appear and was not represented at the hearing. Administrative Law Judge (ALJ) Don Smith presided.

On September 26, 2007, Petitioner issued its Notice of Hearing, directed to

Maurece Lynn Clark d/b/a Texan's Liquors, 9417 Main, Houston, Texas 77054, via certified mail, return receipt requested, to Respondent's last known mailing address. The letter was "returned to sender unclaimed," as evidenced by the certified mail receipt. After presenting evidence of notice, Staff moved for a default decision, pursuant to 1 TEX. ADMIN. CODE (TAC) § 155.55. Because the hearing proceeded on a default basis, Staff's factual allegations contained in the Notice of Hearing are deemed admitted as true; therefore, the ALJ has incorporated those allegations into the findings of fact without further discussion of the evidence. The facts, as deemed admitted, support the requested sanction.

## II. FINDINGS OF FACT

1. Maurece Lynn Clark d/b/a Texan's Liquors (Respondent), located at 9417 Main, Houston, Harris County, Texas, holds Package Store Permit P-576406, which includes the Local Cartage Permit.
2. On September 26, 2007, the staff of the Texas Alcoholic Beverage Commission (TABC) timely sent a Notice of Hearing by certified mail, return receipt requested, to Respondent's last known mailing address at 9417 Main, Houston, Texas 77054. The Notice of Hearing contained information regarding the date, time, and place of the hearing; the statutes and rules involved; the legal authorities under which the hearing would be held; and the matters asserted.
3. The Notice of Hearing also contained language in 12-point, bold-face type informing Respondent that if she failed to appear at the hearing, the factual allegations against her would be deemed admitted as true, and the relief sought in the Notice of Hearing might be granted by default.
4. The hearing on the merits convened as scheduled on November 30, 2007. Respondent did not appear at the hearing, and the record was closed on the same day.
5. The hearing proceeded on a default basis, and the allegations contained in the Notice of Hearing were deemed admitted as true.
6. On or about December 1, 2006, Respondent, or Respondent's agent, servant, or employee, failed to timely pay for liquor from a wholesale dealer.
7. On or about December 2, 2006, Respondent, or Respondent's agent, servant, or employee,

failed to timely pay for liquor from a wholesale dealer.

### III. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter, pursuant to Subchapter B of Chapter 5, and § 11.61 of the Texas Alcoholic Beverage Code, TEX. ALCO. BEV. CODE ANN. § 1.01 *et seq.*
2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative hearing in this matter and to issue a proposal for decision containing proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. Ch. 2003.
3. Proper and timely notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051, 2001.052 and 2001.054(c); 1 TEX. ADMIN. CODE (TAC) § 155.55; and TEX. ALCO. BEV. CODE ANN. § 11.63.
4. Notice of the hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings Rules, 1 TAC § 155.55.
5. Based on the above Findings of Fact, Respondent violated TEX. ALCO BEV. CODE ANN. §§ 11.61 (b) (2), 61.71 (a) (1), and 102.32.
6. Based on the above Findings of Fact and Conclusions of Law, Staff is entitled to a default decision against Respondent, pursuant to 1 TAC § 155.55.
7. Based on the foregoing Findings of Fact and Conclusions of Law, a six-day suspension of Respondent's permits/licenses is warranted.
8. Pursuant to TEX. ALCO. BEV. CODE ANN. § 11.64, the Respondent should be allowed to pay a \$900.00 civil penalty in lieu of suspension of her permits and licenses.

**SIGNED** December 19, 2007.

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**DON SMITH**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**